

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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THOMAS LAMARCO and DIANE LAMARCO,

Plaintiffs,

ORDER

22-cv-4629 (GRB) (JMW)

-against-

NEW YORK SUFFOLK COUNTY, COMISSIONER
RODNEY HARRISON, *Individually and in his*
Professional Capacity, CAPTAIN WILLIAM SCRIMA,
Individually, SGT. WILLIAM WALSH, *Individually*,
POLICE OFFICER “JOHN” PLIHCIK, *Individually*,
and “JOHN DOES 1-5,” *Individually*,

Defendants.

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WICKS, Magistrate Judge:

Plaintiffs Thomas and Diane LaMarco (“Plaintiffs”) commenced this 42 U.S.C. § 1983 action against Defendants, New York Suffolk County, Commissioner Rodney Harrison, Captain William Scrima, Sgt. William Walsh, Police Officer “John” Plihcik, and John Does 1-5 (collectively, “Defendants”) on August 5, 2022, for declaratory and injunctive relief, seeking a declaration that Suffolk County’s firearms policy violates the preexisting rights protected by the Second, Fourth, and Fourteenth Amendments of the Constitution. (ECF No. 1) Defendants filed their Answer on September 2, 2022 (ECF No. 9.) On September 5, 2023, the undersigned issued a final extension of discovery dates and deadlines, and ordered all discovery to be completed before January 15, 2024. (ECF No. 20.)

On December 5, 2023, Plaintiffs notified the Court that deposition of Suffolk County police officer Ciara Plihcik was taken by Plaintiff’s counsel on November 21, 2023, “at which

time it was learned that the defendant identified as “Police Officer ‘John’ PLIHCICK” should be identified as “Police Officer *Ciara Plihcik*.” (ECF No. 21) (emphasis added). Plaintiffs now seek to amend its the caption and allegations of its Complaint “to reflect Officer Plihcik’s actual identity.” (*Id.*)¹ Plaintiffs’ request is unopposed by Defendants. (ECF No 22.)

Motions to amend pleadings are generally governed by Federal Rule of Civil Procedure 15(a). Pursuant to Fed. R. Civ. P. 15(a)(2), “The court shall freely give leave when justice so requires.” “Unless there is a showing of bad faith, undue delay, futility or undue prejudice to the non-moving parties, the district court should grant leave to amend.” *Adlife Mktg. & Commc’ns Co. v. Best Yet Mkt., Inc.*, No. 17-CV-02987 (ADS) (ARL) 2018 WL 4568801, at *1 (E.D.N.Y. Sept. 24, 2018) (citing *Forman v. Davis*, 371 U.S. 178, 182 (1962)); *see also Milanese v. Rust-Oleum Corp.*, 244 F.3d 104, 110 (2d Cir. 2001).

Here, the Court finds that Plaintiffs’ unopposed motion to amend (ECF No. 22) was not made in bad faith, nor unduly delayed, and does not other prejudice the non-moving parties. Where, as here, “a plaintiff has sued and served the correct party but has mistakenly used the wrong name of the defendant in the original caption, courts have permitted an amendment to correct the error.” *Hamilton Ins. Co. v. Anthony Bross, Inc.*, No. 19CV01344ARRCLP, 2020 WL 6149680, at *3 (E.D.N.Y. Sept. 30, 2020), *report and recommendation adopted*, No. 19CV01344ARRCLP, 2020 WL 6146882 (E.D.N.Y. Oct. 20, 2020) (internal citations omitted); *Garg v. Winterthur*, 525 F. Supp. 2d 315, 317 (E.D.N.Y. 2007) (allowing amendment where the proper entity is served, though incorrectly named, absent a showing of prejudice); *United States v. Edwards*, 241 F.R.D. 146, 148-49 (E.D.N.Y. 2007). Accordingly, the motion is **GRANTED**, and Plaintiff is directed to file an amended complaint on the docket on or before December 15,

¹ The caption and allegations contained in Plaintiffs’ Complaint identifies one of the defendants as “Police Officer “John” PLIHCICK.” (ECF Nos. 1, 21.)

2023, which shall serve as the operative pleading in this matter. The Clerk of the Court and the parties are hereby notified that the caption in this case shall, from this point forward, designate “Ciara Plihcik” as a party Defendant, as follows:

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Plaintiffs,

-against-

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Professional Capacity, CAPTAIN WILLIAM SCRIMA,
Individually, SGT. WILLIAM WALSH, *Individually*,
POLICE OFFICER CIARA PLIHCIK, *Individually*,
and “JOHN DOES 1-5,” *Individually*,

Defendants.

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Dated: Central Islip, New York
December 7, 2023

SO ORDERED:

/S/ James M. Wicks

JAMES M. WICKS
United States Magistrate Judge